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JUN- 8 1995

Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment to the Commission's)	
Regulatory Policies Governing)	IB Docket No. 95-41
Domestic Fixed Satellites and)	
Separate International Satellite)	
Systems)	DOCKET FILE COPY ORIGINAL

COMMENTS OF LORAL/QUALCOMM PARTNERSHIP, L.P.

John T. Scott, III William D. Wallace Crowell & Moring 1001 Pennsylvania Ave. N.W. Washington, D.C. 20004-2505 202-624-2500

Leslie A. Taylor Leslie Taylor Associates 6800 Carlynn Court Bethesda, MD 20817-4302 301-229-9341

June 8, 1995

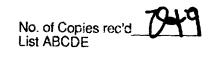


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EXECUTIVE SUMMARY

The Commission should not revise regulation of U.S.-licensed mobile satellite systems, including the geostationary mobile satellite system and Big LEO systems.

Implementation of geostationary FSS systems commenced over 25 years ago. Since that time, the regulatory environment for such systems has changed substantially, as the Commission points out in the NPRM. However, MSS systems are just commencing operation. United States domestic MSS provided by the dedicated space segment facilities of the American Mobile Satellite Corporation (AMSC) has yet to be implemented, and the recently licensed global non-geostationary MSS systems, including GLOBALSTAR, will not implement service prior to 1997 or 1998. With regard to mobile-satellite systems, the issues of spectrum sharing and use, coordination between systems, and the benefits to the United States of ensuring the successful implementation of both its domestic geostationary and its global non-geostationary MSS systems are paramount. But, there is little data on these issues because the MSS systems have not yet begun service. Accordingly, LQP believes that the public interest will best be served if the Commission limits the current proceeding to consolidation of the regulatory schemes for domestic and international fixed-satellite service systems licensed in the United States, and defers any consideration of consolidation of regulation of U.S.-licensed domestic and international mobile satellite systems to a future time.

There are policies which should be adopted for MSS, but these are based on very different concerns than those at issue here. The Commission should ensure that globally allocated spectrum is available only for global systems, such as non-GSO systems. This would assist in preserving the competitive position of U.S.-licensed global Big LEO systems. Spectrum allocated to Region 2 or only the U.S. should be utilized to meet the second generation requirements of U.S.

geostationary MSS systems. The Commission should also consider requiring a minimum of two systems, with a preference for utilization of code division multiple access (CDMA) technology. Also, the Commission should evaluate whether some allocations should be designated for non-GSO systems only, to ensure that global non-GSO systems will not face disparate treatment in coordination with GSO systems.

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COMMENTS OF LORAL/QUALCOMM PARTNERSHIP, L.P.

Pursuant to Section 1.415 of the Commission's Rules, Loral/QUALCOMM Partnership, L.P. (LQP), hereby submits its initial comments on the <u>Notice of Proposed Rule Making</u>, FCC 95-146 (released April 25, 1995) (<u>NPRM</u>), in this proceeding. LQP is authorized to construct, launch and operate GLOBALSTAR, a low-earth orbiting satellite system, to provide Mobile-Satellite Service (MSS) in both domestic and global markets using the 1.6/2.4 GHz bands. Accordingly, LQP has a substantial interest in this proceeding.

In the <u>NPRM</u>, the Commission proposes consolidation of rules and policies governing U.S.-licensed geostationary fixed-satellite systems. The Commission states that such consolidation would benefit the public by increasing competition in the provision of fixed-satellite services, increasing the capacity available for both domestic and international use, and eliminating regulations that might impede system operators' ability to meet their customers' needs.² The Commission also asks whether this consolidation should extend to geostationary MSS systems and what policies should be used for licensing foreign satellite systems. While it

¹ Loral/QUALCOMM Partnership, L.P., DA 95-128 (released Jan. 31, 1995).

² NPRM, at para. 1.

may be timely for the Commission to consolidate its rules and policies governing U.S.-licensed geostationary fixed-satellites, it should defer to a future proceeding the complex issues concerning regulatory schemes for domestic and international mobile-satellite service, including the issue of whether COMSAT, a U.S. licensee, should be permitted to provide domestic service using Inmarsat or Inmarsat-P capacity.

I. THE COMMISSION SHOULD NOT ADDRESS CONSOLIDATION OF REGULATIONS FOR MSS IN THIS PROCEEDING BECAUSE UNLIKE FOR GSO FSS SYSTEMS, EXTENSIVE INFORMATION IS NOT AVAILABLE ON REGULATORY EXPERIENCE WITH MSS SYSTEMS.

In the <u>NPRM</u>, the Commission proposes consolidation of its policies and rules governing U.S.-licensed geostationary fixed-satellite systems into a single regulatory scheme. In so doing, the Commission would eliminate the distinction between its Transborder Policy and Separate International Satellite Systems ("Separate Systems") Policy, and permit all U.S.-licensed geostationary fixed-satellites to provide domestic and international services on a co-primary basis. The Commission also proposes to adopt a consolidated financial standard and policy on the regulatory status of fixed-satellite systems.

LQP takes no position on the proposed consolidation of rules and policies governing geostationary domestic and international FSS. It is concerned, however, with the proposals in the NPRM regarding application of these revisions to geostationary MSS systems and to international systems. The basis for the revisions to FSS policies and rules is the Commission's extensive experience in regulating geostationary FSS systems. The same type of experience is not available for MSS -- neither for geostationary MSS nor non-geostationary MSS. Accordingly, the impact of these revisions on MSS systems cannot be adequately evaluated at this time, and consideration of MSS should be deferred to a later date.

A. The Commission Has Had Many Years' Experience to Develop the Policies and Rules for Domestic and International GSO FSS Systems

During the past 30 years, the Commission has utilized policies and rules to promote implementation of satellite communications systems and competition in the provision of domestic and international fixed-satellite service. The Commission's policies and rules evolved over the years to promote multiple entry, to provide for speedy processing of applications and to ensure that the public has available efficient and effective satellite telecommunications services.

For example, the Commission adopted strict financial standards for domestic FSS in the mid-1980s to ensure licensees can proceed to construct immediately upon grant.³ The Commission also adopted due diligence requirements to ensure timely implementation of systems and services. These rules and policies have achieved their objective in ensuring that domestic fixed-satellite service is provided competitively in the United States to the benefit of U.S. consumers. This robust market is demonstrated by the strength of the United States commercial satellite construction, launch and service industry, currently dominated by revenues relating to fixed-satellites.⁴

With regard to Transborder and Separate Systems service, which both involve the use of non-Intelsat satellites for the provision of international services, the Commission also has ample experience. The Commission's experience with transborder service dates from 1981 when the Executive Branch adopted a policy which permitted the Commission to license U.S. systems of non-Intelsat satellites

³ <u>Licensing Space Stations in the Domestic Fixed-Satellite Services</u>, 50 Fed. Reg. 36071 (Sept. 5, 1985).

⁴ "Revenues of the commercial space industries are expected to increase to \$6.5 billion in 1994." <u>U.S. Industrial Outlook 1994</u>, U.S. Department of Commerce, at p. 28-1.

in cases where the global system could not provide the service required, or where the service would be clearly uneconomical or impractical using the Intelsat system. Pursuant to this policy, the Commission has permitted U.S.-licensed domestic-fixed satellites to provide certain international services conditioned on successful coordination with Intelsat and the concurrence of other involved countries. Such authorizations have enabled transborder provision of video programming as well as extension of U.S.-domestic satellite networks. A number of U.S. separate international satellite systems also have been licensed and implemented, as a result of an Executive Branch determination in 1984 that such systems could be authorized, subject to certain conditions (such as a restriction on interconnection with the public switched network).

Since adoption of the Executive Branch transborder and separate system policies, the Commission has authorized numerous transborder operations, as well as a number of separate international systems. The Commission also has permitted separate system licensees to provide domestic service within the United States on an "ancillary" basis. Moreover, Intelsat has substantially liberalized its approach to coordination with separate international satellite systems, and now does not require showings of economic harm unless a separate system proposes to interconnect into the public switched network more than 8,000 64-kbps equivalent circuits. Thus, the Commission has permitted the introduction of competition in the provision of international fixed-satellite service while ensuring that Intelsat would not be harmed and would have an opportunity to adapt to a competitive

⁵ <u>See</u> Letter from James L. Buckley, Under Secretary for Security Assistance, Science and Technology, to Federal Communications Commission Chairman Mark Fowler (July 23, 1981) (printed in Appendix to Transborder Satellite Video Services, 88 FCC 2d 258, 287 (1981)).

⁶ <u>See</u> Letter from George P. Schultz, Secretary of State, and Malcolm Baldridge, Secretary of Commerce, to Federal Communications Commission Chairman Mark S. Fowler (Nov. 28, 1984).

environment.

This experience has provided the Commission with the background necessary to review the proposed policies on U.S.-licensed domestic and international geostationary fixed-satellite systems. However, MSS systems are just initiating service now, and so the Commission lacks equivalent experience to consider whether policies for the domestic GSO MSS system and the global non-geostationary MSS systems should be consolidated with those of FSS systems.

B. MSS Systems Are on the Threshold of Implementation, and so, Insufficient Data Is Available for Policy Decisions Needed to Decide that Consolidation of Regulation Is in the Public Interest.

The Commission should not address policies and regulations for MSS in this proceeding. The Commission seeks comment "as to whether licensees of geostationary systems that provide <u>mobile</u> and broadcast services should be permitted to provide both domestic and international services on a co-primary basis, subject, of course, to U.S. international coordination obligations." The Commission states that such treatment "appears to foster the same goals as eliminating geographic restrictions for U.S. fixed-satellites -- increased competition, increased consumer choices, and further development of the global information infrastructure." In addition, the Commission seeks comments as to whether Inmarsat should be permitted to serve the U.S. market, and whether, and under what conditions, non-U.S. satellites should be permitted to serve the U.S. market. Although the Commission does not specifically address revisions to regulation of global non-geostationary MSS systems, permitting domestic GSO

⁷ NPRM, at para. 38 (emphasis supplied).

⁸ <u>Id</u>.

⁹ <u>Id.</u>, at para. 39.

MSS systems to provide international services necessarily implicates such regulation. Moreover, the issue of authorizing service by COMSAT over INMARSAT and/or INTELSAT facilities implicates much broader issues than the consolidation of regulations for U.S.-licensed domestic and international satellite systems. Such issues have an impact on U.S. Big LEO MSS systems which may compete with the systems operated by the international organizations.

LQP agrees with the Commission's goals of promoting competition, providing more choices for consumers and developing the global information infrastructure. These same goals were also sought to be achieved through policies recently adopted in the Big LEO Rulemaking. For example, LQP's use of code division multiple access (CDMA) afforded the Commission the opportunity to devise a spectrum plan for non-geostationary mobile satellite service which will accommodate more than one Big LEO system, thereby permitting substantial competition as well as efficient use of spectrum.

Nevertheless, Big LEO MSS systems face many significant challenges before implementation of service. These include allocation of sufficient feeder link spectrum at the upcoming WRC-95, international frequency coordination through the new procedure dictated by Resolution 46, and obtaining access to foreign markets. It will be some time before the United States can be assured that these objectives have been met and can evaluate the impact of the Commission's policies. In addition, certain matters are pending before the Commission which implicate the issues of competition in the provision of mobile satellite service. These matters include Comsat's application to participate in the procurement of

Amendment of the Commission's Rules to Establish Rules and Policies
Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz
Frequency Bands, 9 FCC Rcd 5936, at paras. 1-5 (1994) ("Big LEO Rules Order").

the Inmarsat-P space segment,¹¹ Comsat's application to provide land mobile and aeronautical services within the United States,¹² and the application of AMSC to provide transborder MSS to the Caribbean.¹³ With regard to the issue of whether and under what conditions non-U.S. satellites should be permitted to serve the U.S. domestic market, the Commission's pending proceeding concerning development of appropriate market access regulations may also provide significant and useful information for review of Commission policies.¹⁴

As should be readily apparent, the issues concerning domestic and international MSS systems raised by the Commission as incidental to its consolidation of domestic and international FSS policies involve complex technical, political and economic issues and implicate an entirely different set of facts and concerns. These issues deserve consideration independently of the FSS policies and regulations. Not only would it be premature to address many of these issues, but, given the distinctions between the Commission's FSS and MSS experiences, it would be inappropriate to address MSS issues based on the experience which the Commission has developed for FSS.¹⁵

¹¹ <u>Application of Comsat Corporation For Authority to Participate in the Procurement of Facilities of the I-CO Global Communications Limited System, FCC File No. 106-SAT-MISC-95.</u>

¹² Application of Comsat Corporation for Authority to Provide U.S. Domestic Land and Aeronautical Mobile Satellite Services, filed May 11, 1995 (ITC-95-341).

¹³ <u>Application of AMSC Subsidiary Corporation for Authority to Provide</u> <u>Incidental Transborder and International Maritime Communications</u>, File No. ITC-95-280.

¹⁴ See, Market Entry and Regulation of Foreign Affiliated Entities, IB Docket No. 95-22, and LQP Comments, filed April 10, 1995, at 6.

¹⁵ The Commission itself also notes some of the differences between geostationary (GSO) and non-geostationary (NGSO) mobile satellite systems which provide a basis for varying regulatory treatment. <u>Id.</u>, at para. 37.

II. THE POLICIES AND REGULATIONS FOR MSS MUST BE BASED ON THE UNIQUE CHARACTERISTICS OF MSS SYSTEMS, INCLUDING TECHNICAL CHARACTERISTICS, LIMITATIONS ON SPECTRUM, INTERNATIONAL COORDINATION AND MARKET ACCESS.

Regulation of MSS systems implicates complex technical, spectrum, international coordination and market issues. For example, MSS systems generally provide service to omnidirectional antennas which do not discriminate between satellites of various systems. This factor alone creates an enormous difference in the ability of the Commission to license and coordinate multiple systems as opposed to FSS systems.

Also, compared to FSS, there is only a small amount of spectrum allocated to MSS both globally and in the United States. As a result, there are far fewer MSS systems than FSS systems at this time and substantial competition for scarce spectrum. The limited spectrum for MSS also requires U.S. systems to compete with foreign systems for use of the same allocations. Consolidating the regulation of MSS and FSS would lose sight of the distinctive concerns arising from the limits on MSS spectrum.¹⁶

With respect to international coordination, MSS systems -- both geostationary and non-geostationary -- will be subject to the new procedures dictated by Resolution 46. In contrast, international coordination of FSS systems has been accomplished for many years.

The marketplace for MSS is rapidly changing. Inmarsat is the largest current provider of MSS. Inmarsat is an international consortium, created by a

¹⁶ See Final Report of Informal Working Group 3 of the Final Report of the FCC Industry Advisory Committee for the ITU 1995 World Radiocommunication Conference, May 4, 1995, which supports the need for substantial additional spectrum allocations for MSS.

Convention and Operating Agreement, signed in 1976. The Communications Satellite Corporation (Comsat) signed the Operating Agreement on behalf of the United States and represents the United States within Inmarsat. Comsat has approximately 23 percent ownership of the Inmarsat system and provides Inmarsat space segment to United States users, which includes resellers as well as end users. Inmarsat, originally formed to provide maritime mobile service, has amended its Convention to provide aeronautical mobile as well as land mobile service. However, the land mobile amendments are not yet in force because the required two-thirds of the signatories (as of 1989) have not ratified the amendments.¹⁷

A number of national and regional geostationary MSS systems have also been authorized with some recently placed in service. These include the U.S. AMSC system, Canada's TMI system, Mexico's L-band transponder on its Solidaridad satellite, Australia's OPTUS system, Russia's Marathon system and others. All of these systems must coordinate with Inmarsat, and many, with each other.

Within the United States, the Commission determined that the limited spectrum available for MSS necessitated a single system for the upper L-band -- 1544-1559 MHz (space-to-Earth) and 1645.5-1660.5 MHz (Earth-to-space)-- for the first generation. The Commission adopted this approach despite its usual preference for competition. In addition, to preserve the maximum access to spectrum by this system, the Commission limited access to the United States by

¹⁷ <u>INMARSAT in the 21st Century</u>, Mary Ann Elliott and Betsy Kulick, Arrowhead Space and Telecommunications, Inc., 1994, at p. 7.

¹⁸ See 2 FCC Rcd 485 (1987); Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992), aff'd sub nom Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

foreign systems to: (1) interim land mobile service, prior to implementation of AMSC's system¹⁹ and (2) aeronautical service for international flights.²⁰ Although the Commission has jurisdiction to limit Comsat's provision of Inmarsat maritime service throughout domestic inland waterways and coastal areas,²¹ the Commission has not restricted such service.

AMSC launched its first satellite on April 7, 1995 but has not yet commenced service. Consequently, the Commission has not had the opportunity to observe the results of its policies concerning domestic geostationary mobile satellite service.

With regard to the recently-licensed Big LEO systems, the Commission has just concluded a lengthy and complex rulemaking which developed a spectrum sharing plan as well as licensing and service rules. The spectrum used for these systems was allocated only recently -- at the 1992 World Administrative Radio Conference -- and is subject to sharing constraints with terrestrial fixed and mobile systems and with the radio astronomy service. The Commission determined that the systems must provide global service. In addition, the Commission imposed United States coverage requirements. In the <u>Big LEO Rules Order</u> the Commission determined that the spectrum available would

¹⁹ Order and Authorization, File No. I-T-C-90-038, 7 FCC Rcd 942 (1992).

 $^{^{20}}$ Report and Order, CC Docket No. 87-75, File No. CSS-86-005-M(2), 4 FCC Rcd 6072 (1989).

²¹ <u>See</u> International Maritime Satellite Telecommunication Act, 47 U.S.C. Section 753.

²² Big LEO Rules Order, at para. 23.

²³ <u>Id.</u>, at paras. 24, 25.

support no more than five U.S. systems.²⁴ In January, 1995, the Commission licensed LQP, TRW and Motorola to construct, launch and implement systems in the 1.6/2.4 GHz frequency bands.²⁵ Three other applicants are permitted to submit additional financial qualifications in January, 1996.²⁶

More than 30 satellite networks using the 1.6/2.4 GHz frequency bands have been advance published with the International Telecommunication Union's Radio Registration Board (RRB).²⁷ The U.S.-licensed Big LEO systems may have to coordinate with these satellite systems, as well as terrestrial systems in the band.²⁸ In addition, the U.S.-licensed Big LEO systems will have to obtain suitable allocations for feeder link spectrum at the upcoming WRC-95. The Big LEO systems also will need to obtain the right to operate gateway earth stations in countries where such stations will be located. Service providers using the capacity of the Big LEO systems will need to meet various national regulatory requirements, including authorization for operation of the mobile earth terminals.

²⁴ <u>Id.</u>, at paras. 44, 45.

²⁵ <u>Loral/QUALCOMM Partnership, L.P.</u>, cited <u>supra, Motorola Satellite</u> <u>Communications, Inc.</u>, DA 95-131 (released Jan. 31, 1995); <u>TRW Inc.</u>, DA 95-130 (released Jan. 31, 1995).

²⁶ See Mobile Communications Holdings, Inc., DA 95-132 (released Jan. 31, 1995), Constellation Communications, Inc., DA 95-129 (released Jan. 31, 1995), and Letter of Brian B. Pemberton, President, AMSC, to William F. Caton, Acting Secretary of the Federal Communications Commission, November 16, 1994, stating that "AMSC is declining at this time to submit a financial showing in connection with the non-geostationary system design."

Report of the Conference Preparatory Meeting on Technical, Operational and Regulatory/Procedural Matters to be Considered by the 1995 World Radiocommunication Conference, April 24, 1995, Geneva, at p. 16.

²⁸ In the <u>Big LEO Rules Order</u>, the Commission stated that it did "not know if, and the extent to which, foreign systems will impact U.S. systems' operations across the entire band." <u>Big LEO Rules Order</u>, at para. 55.

In short, the technical aspects of MSS systems, MSS spectrum allocation and management policies, international coordination and the market for MSS all raise issues and concerns which are distinct from those arising for FSS systems. Any attempt to "consolidate" the regulatory aspects of FSS and MSS systems is thus inappropriate. This is true even with respect to geostationary MSS and FSS systems because policies for geostationary MSS have an impact on non-geostationary MSS. Accordingly, the Commission should limit the regulatory consolidation proposed in this rulemaking to geostationary FSS systems. LQP would welcome a separate rulemaking focused on the regulatory aspects of MSS systems, and in the next section, suggests issues which should be considered in such a proceeding.²⁹

III. THE COMMISSION SHOULD CONSIDER SPECIFIC POLICIES AND RULES FOR MSS IN SEPARATE PROCEEDINGS

Although the Commission should not in this proceeding revise its policies concerning the domestic geostationary MSS system and global non-GSO MSS systems, it should review such policies in other relevant proceedings such as one on licensing 2 GHz MSS systems. Such policies should take full consideration of spectrum availability, both globally and regionally, and should promote competition in the provision of service, if at all possible. Some policies which should be considered include:

(1) Spectrum allocated on a global basis should be available only for global systems, such as non-GSO systems. Such a policy would preserve the competitive position of U.S.-licensed global MSS systems by ensuring the availability of spectrum in the United States for systems which operate on a global basis.³⁰ If

²⁹ <u>Id.</u>, at para. 4.

³⁰ <u>Id.</u>

such spectrum were made available for U.S. domestic MSS systems, this would undercut the ability of U.S.-licensed global MSS systems to compete with foreign global systems. Other spectrum, allocated to Region 2, or the U.S. only, can be made available for U.S. domestic MSS systems.³¹

- (2) In the case of U.S.-licensed global MSS systems, the Commission should adopt spectrum sharing and licensing rules which provide for a minimum of two service providers, with a preference for utilization of code division multiple access (CDMA) technology. As demonstrated in the <u>Big LEO Rulemaking</u>, the use of CDMA can increase spectrum efficiency and facilitate competition.
- (3) In the future, spectrum should be designated for use by non-GSO systems.³² Designating spectrum for non-GSO systems would recognize the importance of global communications and ensure that global non-GSO MSS systems would not face disparate treatment in coordination with GSO systems, because of Radio Regulations such as RR 2613.³³
- (4) With regard to authorizing foreign systems to provide MSS in the United States, the Commission should take into consideration whether the first generation U.S.-licensed MSS systems succeed in obtaining feeder link allocations, are proceeding smoothly in international coordinations, and face no discrimination

³¹ The current International Table of Frequency Allocations includes several allocations for MSS available only in Region 2. Such allocations would be suitable for domestic and regional systems.

³² The so-called "Little LEO" allocations limit the use of the frequencies by MSS to non-geostationary satellite systems. <u>See</u> Radio Regulation 599B, <u>Final Acts</u>, World Administrative Radio Conference, Malaga-Torremolinos, 1992.

³³ See, Comments of Teledesic Corporation, filed May 5, 1995, at pages 5-6, in the Notice of Proposed Rule Making in ET Docket No. 95-18 (released Jan. 31, 1995).

in obtaining required licenses in other countries.

These policies would enable the Commission to promote the continued development of both domestic geostationary and global non-geostationary MSS systems, while providing guidelines concerning the use of future spectrum that may be available for such systems.

IV. <u>CONCLUSION</u>

As discussed above, the instant proceeding should maintain its focus on policies and rules governing domestic and international geostationary fixed-satellite service. The Commission should not consolidate policies and regulations for geostationary MSS systems or international MSS systems based on the record in this proceeding. With regard to spectrum that may be available for future MSS systems, the Commission should proceed to develop appropriate policies which will serve the public interest and ensure the international competitiveness of U.S. MSS systems.

Respectfully submitted,

LORAL/QUALCOMM PARTNERSHIP, L.P.

John T. Scott, III

William D. Wallace

Crowell & Moring

1001 Pennsylvania Avenue N.W.

Washington, D.C. 20004-2505

(202) 624-2500

Bv:

Leslie A. Taylor

Leslie Taylor Associates

6800 Carlynn Court

Bethesda, MD 20817-4302

(301) 229-9341

Its Attorneys

June 8, 1995

CERTIFICATE OF SERVICE

I, Andrew F. Taylor, hereby certify that on this 8th day of May, 1995, copies of the foregoing "Comments of Loral/QUALCOMM Partnership, L.P." were mailed, postage prepaid, to the following:

Lon C. Levin Vice President American Mobile Satellite Corp. 10802 Parkridge Blvd. Reston, VA 22091

Robert A. Mazer Nixon, Hargrave, Devans & Doyle One Thomas Circle, N.W. Suite 800 Washington, D.C. 20005

Bruce D. Jacobs, Esq. Glenn S. Richards, Esq. Fisher, Wayland, Cooper & Leader 2001 Pennsylvania Ave., N.W. Suite 400 Washington, D.C. 20006

Jill Abeshouse Stern, Esq. Shaw, Pittman, Potts & Trowbridge 2300 N Street N.W. Second Floor Washington, D.C. 20037

Victor J. Toth, P.C. Law Offices 2719 Soapstone Drive Reston, VA 22091

Cheryl Lynn Schneider COMSAT 6560 Rock Spring Drive Bethesda, MD 20817 Raul R. Rodriguez Stephen D. Baruch David S. Keir Leventhal, Senter & Lerman 2000 K Street N.W. Suite 600 Washington, D.C. 20006-1809

James G. Ennis IRIDIUM, Inc. 1401 H Street, N.W. Washington, D.C. 20005

Philip L. Malet Steptoe & Johnson 1330 Connecticut Ave. N.W. Washington, D.C. 20036

Richard E. Wiley Carl R. Frank, Esq. Wiley, Rein & Fielding 1776 K Street N.W. Washington, D.C. 20006

Robert A. Mansbach COMSAT World Systems 6560 Rock Spring Drive Bethesda, MD 20817

John L. Bartlett Wiley, Rein & Fielding 1776 K Street, N.W. Washington, D.C. 20006

Donald M. Jansky Jansky/Barmat Telecommunications 1899 L Street N.W. Suite 1010 Washington, D.C. 20036 Stephen L. Goodman Halprin, Temple & Goodman Suite 650 East Tower 1100 New York Ave. N.W. Washington, D.C. 20005

Jonathan D. Blake Covington & Burling 1201 Pennsylvania Ave., N.W. P.O. Box 7566 Washington, D.C. 20044

Thomas J. Keller Verner, Liipfert, Bernhard, McPherson & Hand, Chartered 901 15th Street, N.W. Suite 700 Washington, D.C. 20005

Nancy J. Thompson General Attorney COMSAT Mobile Communications 22300 COMSAT Drive Clarkburg, MD 20871

Philip V. Otero Alexander P. Humphrey GE American Communications, Inc. 1299 Pennsylvania Ave., N.W. Washington, D.C. 20004

Gary M. Epstein
John P. Janka
Mary E. Britton
Latham & Watkins
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Tom W. Davidson, P.C. Akin, Gump, Strauss, Hauer & Field 1333 New Hamshire Avenue, N.W. Suite 400 Washington, D.C. 20036 Leonard Raish Fletcher, Heald & Hildreth 11th Floor 1300 North 17th Street Rosslyn, VA 22209

Ted Pierson, Jr.
Pierson & Tuttle
1200 19th Street, N.W.
Suite 607
Washington, D.C. 20036

Mark C. Rosenblum Kathleen F. Carroll Ernest A. Gleit Room 3261B3 295 North Maple Avenue Basking Ridge, NJ 07920

Robert M. Gurss Wilkes, Artis, Hedrick & Lane, Cht. 1666 K Street, N.W. Suite 1100 Washington, D.C. 20006

Dennis J. Burnett John E. Wells IV Haight, Gardner, Poor & Havens 1300 I Street, N.W. Suite 470E Washington, D.C. 20005

Albert J. Catalano Ronald J. Jarvis Catalano & Jarvis, P.C. 1101 30th Street N.W. Suite 300 Washington, D.C. 20007

Julie T. Barton Hogan & Hartson Columbia Square 555 13th Street, N.W. Washington, D.C. 20004-1109 Robert B. Kelly Kelly & Povich, P.C. 1101 30th Street, N.W Suite 300 Washington, D.C. 20007

Michael Stone General Counsel Mobile Communications Holdings, Inc. 1120 19th Street, N.W. Suite 460 Washington, D.C. 20036

Andrew F. Taylor